

Advisory Opinion

IECDB AO 2009-10

October 21, 2009

Matthew D. Wilber
Pottawattamie County Attorney
227 South 6th Street
Council Bluffs, Iowa 51501

Dear County Attorney Wilber:

This opinion is in response to your email letter of September 17, 2009, requesting an opinion from the Iowa Ethics and Campaign Disclosure Board pursuant to Iowa Code section 68B.32A(12) and Board rule 351—1.2. We note at the outset that the Board's jurisdiction is limited to the application of Iowa Code chapters 68A and 68B, Iowa Code section 8.7, and rules in Iowa Administrative Code chapter 351. Advice in a Board opinion, if followed, constitutes a defense to a subsequent complaint based on the same facts and circumstances.

FACTUAL STATEMENT:

You question whether an incumbent city council member may obtain city employee government email addresses and then send from a private email account a campaign contribution solicitation to the city employee email addresses.

QUESTION:

Is it permissible for an incumbent city council member to obtain city employee government email addresses and then send from a private email account a campaign contribution solicitation to the city employee email addresses?

OPINION:

We first note that your opinion request referenced a particular situation that already occurred. As a general rule the Board does not issue opinions concerning past conduct. However, based on the fact that the Board does not believe this situation violates a law or rule under our jurisdiction and in recognition of the importance of the issues raised in your request, we issue this opinion.

Iowa Code section 68A.505 and the Board's rules in 351—Chapter 5 prohibit the use of public resources for political purposes. The statute expressly prohibits the "state and the governing body of a county, city, or other political subdivision of the state" from

using public resources for political purposes. In applying this language, the Board has consistently held that this prohibition does not apply to emails sent from a private email address even when the recipient is a public official or employee. This determination is based on the fact that it is not the government that is using its own resources for a political purpose. In addition, public officials and employees cannot control what emails are received. This analysis does not change when it is a government official using the private email address.

Once a political email is received by a public official or employee on a government owned computer and email system, then if the official or employee forwarded the message there would be a violation of the law as that would constitute the use of government resources for a political purpose.

We also note that nothing in the campaign laws in Iowa Code chapter 68A or the ethics laws in Iowa Code chapter 68B per se prohibit an incumbent city council member from soliciting campaign contributions from city employees.

In closing, we note that while this situation you raise does not trigger a violation of a statute or rule under the Board's jurisdiction, we do encourage campaigns to refrain from sending a political email message to addresses belonging to public officials and employees due to the potential for the message to be forwarded in violation of the law.

BY DIRECTION AND VOTE OF THE BOARD

James Albert, Board Chair
Gerald Sullivan
Betsy Roe
John Walsh
Patricia Harper
Saima Zafar

Submitted by: W. Charles Smithson, Board Legal Counsel